

REMARKS

Status of the Claims

Claims 91-112, 114-116, 118-130, and 132-134 are currently pending. Claims 1-90, 113, 117, and 131 have been canceled without prejudice or disclaimer of the subject matter claimed therein.

Finality of the Previous Office Action

Applicants respectfully submit that the finality of the previous Office Action, dated May 16, 2006, is premature. Applicants request reconsideration of the finality of the previous Office Action.

In response to the Final Office Action, dated May 5, 2005, Applicants filed a Request for Continued Examination (RCE) on April 5, 2006, and an amendment amending claim 91 to overcome the rejections. The next Office Action that issued (May 16, 2006) was a First Action Final Office Action, and it contained a new rejection under 35 U.S.C. § 112, first paragraph. Since the Office Action, dated May 16, 2006, contained a new rejection, Applicants respectfully submit that the finality of the Office Action dated May 16, 2006, was premature and should be withdrawn.

Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 91-112, 114-116, 118-130, and 132-134 are rejected under § 112, first paragraph, as failing to comply with the written description requirement.

The Office Action alleges that the disclosure as originally filed fails to support the claims as they stand because the disclosure does not support the exclusion of sensitizers and stabilizers that are extraneous protein or type II quenchers from the samples to be irradiated.

Applicants respectfully submit that the specification as originally filed provides specific examples that do not include sensitizers and stabilizers that are extraneous protein or type II quenchers. For example, in Examples 1, 2, and 4, only polypropylene glycol is added to the protein sample, and in Example 3, only sodium ascorbate is added to the protein sample. Propylene glycol and sodium ascorbate are stabilizers but they are not sensitizers or stabilizers that are extraneous proteins or a type II quenchers.

The Office Action also alleges that the stabilizers now excluded are the preferred embodiments. Applicants respectfully point out that the MPEP 2164.08(c) states “features that are preferred are not to be considered critical.” *In re Goffe* 542 F.2d 564, 191 USPQ 429, 431 (CCPA 1976). As explained by the Court in *In Re Fuetterer*,

To demand that the first to disclose shall limit his claims to what he has found will work or to materials which meet the guidelines specified for "preferred" materials in a process . . . would not serve the constitutional purpose of promoting progress in the useful arts.

In re Fuetterer, 50 CCPA 1453, 1462, 319 F.2d 259, 265, 138 USPQ 217, 223 (1963).

Accordingly, Applicants need not claim what is the preferred embodiment. Moreover, the Examples show that the excluded stabilizers and sensitizers need not be included in the composition.

Further, Applicants respectfully submit that the exclusionary limitation added to claim 91 is not prohibited new matter under *In re Johnson and Farnham*. *In re Johnson and Farnham*, 194 USPQ 187, 196 (CCPA 1977). In *Johnson*, Applicants deleted two precursor compounds from the claims to avoid having them read on a lost interference count. The deleted compounds are exemplified in the specification. The Court in *Johnson* explained that Applicants were “merely excising the invention of another, to which they were not entitled, and were not creating an ‘artificial subgenus’ or claiming ‘new matter’”. *Id.* at 196. Similar to *Johnson*, the excluded elements, sensitizers and stabilizers that are extraneous proteins or type II quenchers, are exemplified in the specification, and Applicants in excluding the elements are not claiming new matter but are excising the invention of disclosed by the prior art.

Moreover, the present specification provides specific Examples that disclose the claimed invention in the absence of the excluded sensitizers and stabilizers. Accordingly, the exclusionary limitation added to claim 91 is not new matter. Applicants respectfully request withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102

Claims 91, 92, 98-108, 110-112, 114-116, 118-123, 127-130, and 132-134 are rejected under 35 U.S.C. § 102(b) as being anticipated by Platz *et al.*

Claim 91 has been amended to exclude sensitizers from the samples to be irradiated. Claims 92, 98-108, 110-123, and 127-134 are dependent upon claim 91, and therefore also include the exclusionary features recited in claim 91.

Unlike the claimed invention, the reference of Platz *et al.* requires the addition of a chemical sensitizer to the sample prior to irradiation. Accordingly, the reference of Platz *et al.* does not anticipate the claimed invention.

The Office Action alleges that the specification as filed fails to provide support for the exclusion of sensitizers and stabilizers that are extraneous proteins and type II quenchers. As discussed above, the specification provides support for the exclusionary limitation because the specification discloses the excluded sensitizers and stabilizers that are extraneous proteins and type II quenchers and provides specific examples of samples that do not include sensitizers or and stabilizers that are extraneous proteins and type II quenchers to the composition. Accordingly, the specification provides adequate support for the exclusionary features recited in claim 91.

Rejection Under 35 U.S.C. § 103

Claims 93-97, 109, and 124-126 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Platz *et al.* as applied to claims 91, 92, 98-108, 110-123, and 127-134 above and further in view of Kapanin *et al.* or Le Maire *et al.*

The amendment to claim 91 is discussed above. Claims 93-97, 109, and 124-126 are dependent upon claim 91. Accordingly, claims 93-97, 109, and 124-126 also exclude sensitizers from the samples.

The deficiencies of Platz *et al.* are discussed immediately above. Neither Kapanin *et al.* nor Le Maire *et al.* cure the deficiencies of Platz *et al.* because they do not disclose excluding a sensitizer from the sample. Kapanin *et al.* and Le Maire *et al.* are relied upon for disclosing irradiation of biological materials at low temperatures. Thus, there is no motivation to combine the cited references and to modify the method of sterilization disclosed in the cited references to obtain the method recited in the claims with reasonable expectation of success. Accordingly, the combination of the cited references does not render the claimed invention obvious.

The Office Action alleges that the specification as filed fails to provide support for the exclusion of sensitizers and stabilizers that are extraneous proteins and type II quenchers. As discussed above, the specification provides support for the exclusionary limitation because the

specification discloses the excluded sensitizers and stabilizers that are extraneous proteins and type II quenchers and provides specific examples of samples that do not include sensitizers and stabilizers that are extraneous proteins and type II quenchers to the composition. Accordingly, the specification provides adequate support for the exclusionary features recited in claim 91.

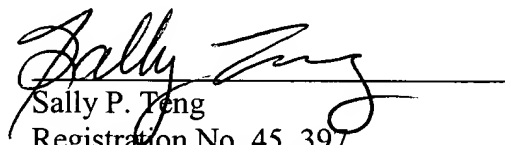
Conclusion

The foregoing amendments and remarks are being made to place the application in condition for allowance. Applicants respectfully request reconsideration and timely allowance of the pending claims. A favorable action is awaited. Should the Examiner find that an interview would be helpful to further prosecution of this application, she is invited to telephone the undersigned at her convenience.

If there are any fees due in connection with the filing of this amendment, please charge the fees to our Deposit Account No. 50-310. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Dated: **October 13, 2006**
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Respectfully submitted,
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